

NOV 11th '07

To: Honorable District Judge.

Re: Joseph Horne # V-84328

Case # 4:07-cv-04592-SBA**FILED**

NOV 16 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

Greetings!

Hello, I'm sorry for the delay. But here's a copy of every document that was sent to the Attorney General's office. It leaves tonight to be mailed in the next available mail day.

So they have been served by me per Rule 4(m) of the Federal Rule of civil procedure.

Thanks!  
/

Address:

P.O. Box 11-120

P.O. Box 7500

Desert City, CA 95532

Respectfully  
Submitted  
Joseph Horne  
/

**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**Name Horne Joseph D  
(Last) (First) (Initial)Prisoner Number \*V-84328 **E-filing**Institutional Address P.O. Box 90-200X-7500Crescent City CA 95532**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**Joseph Devan Horne  
(Enter the full name of plaintiff in this action.)

vs.

Warden Robert Huxel

(Enter the full name of respondent(s) or jailor in this action.)

**C 07 4592**Case No. \_\_\_\_\_  
(To be provided by the clerk of court)**PETITION FOR A WRIT  
OF HABEAS CORPUS****(PR)****Read Comments Carefully Before Filing In****When and Where to File**

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

- 1 -

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or  
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which  
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper  
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief  
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose  
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack  
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

## 11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda  
 13 County Superior Court, Oakland):

14 Monterey County Superior Court, Salinas  
 15 Court Location

16 (b) Case number, if known 55030908

17 (c) Date and terms of sentence April 28<sup>th</sup> 2007 (Attache)

18 (d) Are you now in custody serving this term? (Custody means being in jail, on  
 19 parole or probation, etc.) Yes ✓ No     

20 Where?

21 Name of Institution: Petaluma Bay State Prison

22 Address: P.O. Box-7500 Crescent City CA 95531

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for  
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are  
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Please see Attached sheet labeled  
 27 "Attached Document To Federal writ  
 28 of H.C."

1 3. Did you have any of the following?

2 Arraignment: Yes ☒ No ☐

3 Preliminary Hearing: Yes ☒ No ☐

4 Motion to Suppress: Yes ☒ No ☒

5 4. How did you plead?

6 Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

7 Any other plea (specify) \_\_\_\_\_

8 5. If you went to trial, what kind of trial did you have?

9 Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

10 6. Did you testify at your trial? Yes ☒ No ☐

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment Yes ☒ No ☐

13 (b) Preliminary hearing Yes ☒ No ☐

14 (c) Time of plea Yes ☒ No ☐

15 (d) Trial Yes ☒ No ☒

16 (e) Sentencing Yes ☒ No ☐

17 (f) Appeal Yes ☒ No ☐

18 (g) Other post-conviction proceeding Yes ☒ No ☐

19 8. Did you appeal your conviction? Yes ☒ No ☐

20 (a) If you did, to what court(s) did you appeal?

21 Court of Appeal Yes ☒ No ☐

22 Year: 2006 Result: conviction affirmed

23 Supreme Court of California Yes ☒ No ☐

24 Year: 2007 Result: denied

25 Any other court Yes ☐ No ☒

26 Year: \_\_\_\_\_ Result: \_\_\_\_\_

27  
28 (b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes ☒ No ☐

2 (c) Was there an opinion? Yes ☒ No ☐

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes ☐ No ☒

5 If you did, give the name of the court and the result:

6 \_\_\_\_\_  
7 \_\_\_\_\_

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to  
9 this conviction in any court, state or federal? Yes ☒ No ☐

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that  
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed  
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit  
13 for an order authorizing the district court to consider this petition. You may not file a second or  
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28  
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following  
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: California Supreme Court

19 Type of Proceeding: Petition for writ of Habeas corpus

20 Grounds raised (Be brief but specific):  
21 see attached document.

22 a. \_\_\_\_\_

23 b. // //

24 c. // //

25 d. // //

26 Result: Denied Date of Result: July 25 2007

27 II. Name of Court: \_\_\_\_\_

28 Type of Proceeding: \_\_\_\_\_

Grounds raised (Be brief but specific):

1 a. \_\_\_\_\_

2 b. \_\_\_\_\_

3 c. \_\_\_\_\_

4 d. \_\_\_\_\_

5 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

6 III. Name of Court: \_\_\_\_\_

7 Type of Proceeding: \_\_\_\_\_

8 Grounds raised (Be brief but specific):

9 a. \_\_\_\_\_

10 b. \_\_\_\_\_

11 c. \_\_\_\_\_

12 d. \_\_\_\_\_

13 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

14 IV. Name of Court: \_\_\_\_\_

15 Type of Proceeding: \_\_\_\_\_

16 Grounds raised (Be brief but specific):

17 a. \_\_\_\_\_

18 b. \_\_\_\_\_

19 c. \_\_\_\_\_

20 d. \_\_\_\_\_

21 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes \_\_\_\_\_ No ☒

24 Name and location of court: \_\_\_\_\_

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to

27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: See attached document.

6  
7 Supporting Facts: See attached document.

8  
9  
10  
11 Claim Two: See attached document.

12  
13 Supporting Facts: See attached document.

14  
15  
16  
17 Claim Three: See attached document.

18  
19 Supporting Facts: See attached document.

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21  
22  
23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 Please see attached documents

5 \_\_\_\_\_

6 \_\_\_\_\_

7 Do you have an attorney for this petition? Yes \_\_\_\_\_ No ☒


8 If you do, give the name and address of your attorney:

9 \_\_\_\_\_

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12  
13 Executed on August 8<sup>th</sup> 2007

14 Date



Signature of Petitioner

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20 (Rev. 6/02)

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28  
PET. FOR WRIT OF HAB. CORPUS

- 7 -



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Page # 2

A. Information About Your conviction and Sentence.

Continue Section (1) Part (c).

The court imposed a term of life without parole for the murder (count 1) plus a consecutive indeterminate life term for using a firearm; a consecutive ~~indeterminate~~ indeterminate life term for attempted murder (count 2) plus a 20 year firearm enhancement; a consecutive life term for shooting at an occupied vehicle (count 6); a consecutive life term for shooting at an occupied dwelling (count 8); a consecutive determinate term of three years for selling drugs (count 7) plus a four-year gang enhancement; and a consecutive eight month term for making a criminal threat (count 5). The court imposed additional terms and enhancements but stayed them, under section 659.

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Page 2

# A. Information About Your Conviction

## Continue Part (2)

count one, murder with a "coramul street gang" special circumstance and enhancements for discharging a firearm and causing great bodily injury and death and committing the offense for the benefit of a coramul street gang (pen. code §§ 187, 186.22, subd. (b)(1), 190.2, subd. (a)(22), 12022.53, subd. (c) and (d); count two, attempted murder with gang and firearm discharge enhancements (§§ 664, 187, 186.22, subd. (b)(1)); count three, assault with a firearm with a gang enhancement (§§ 245, subd. (a)(2), 186.22, subd. (b)(1)); count five, making coramul threats (§422); count six, shooting at an occupied vehicle with a gang enhancement (§§ 246, 186.22, subd. (b)(1)); count seven, sale or transportation of a controlled substance with a gang enhancement (Health & Saf. code, § 11352; § 186.22, subd. (b)(1); (b)(4) (B); (b)(1)); count eight, shooting at an inhabited dwelling with gang enhancements (§§ 246, 186.22, subds. (b)(1); (b)(4) (B); count nine, assault with a firearm with a gang enhancement (§§ 245, subd. (a)(2), 186.22, subd. (b)(1)).

Attached Document of Federal Court of H.C.  
 contains page 4- Section (a) Part I

(a) Trial defense counsel rendered ineffective assistance of counsel when he failed to protect petitioner from abusive cross-examination by the prosecutor...

(b) Trial (trial) counsel rendered ineffective assistance when he refused to present petitioner's direct testimony by the normal question and answer method; instead, defense counsel did not participate in direct examination; he did not prepare petitioner for direct examination; he requested petitioner to present his own testimony by narrative summary...

(c) Defense counsel rendered ineffective assistance when he failed to object to non-qualifying crimes being used to prove the street gang special circumstance and the street gang enhancements...

(d) Defense counsel rendered ineffective assistance of counsel when he failed to object to hearsay evidence that co-defendant Samantha

Smith pled guilty to the crime of accessory after the fact for shooting at Beverly Jones's House...

(E) The conviction should be reversed for cumulative error...

(F) Defense counsel rendered ineffective assistance by failing to object to the verdict and sentence for premeditated aspect of attempted murder on the ground that the enhancement of premeditated was not pled as required...

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Continue page #6 Part B. "Grounds for relief".

Claim one: Trial court erred and or trial counsel rendered ineffective assistance of counsel when they failed to protect petitioner from abusive cross examination from prosecutor. Petitioner was denied a fair trial. (Please view constitutional violations on additional page.) Prosecutor committed misconduct.

Continue: Supporting facts of claim one: At trial while petitioner was on the stand being cross examined by the prosecutor neither trial counsel or trial judge protected him. The prosecutor asked petitioner more than 40 improper questions. Petitioner's trial counsel sat mute during the entire cross examination, raising absolutely no objections. He did not participate. After trial counsel notified the courts that he did not understand the narrative summary the courts did nothing to be sure counsel understood his position.

Continue claim two:  
Trial counsel rendered ineffective assistance of counsel when he refuse to press - present petitioner's direct testimony by the normal question and answer method; instead defense counsel did not participate in direct examination. He did not prepare petitioner for direct examination; He requested petitioner to present his own testimony by narrative summary. (Please view U.S. constitutional violations on additional page.) Petitioner was denied right to a fair trial... It further violated petitioner's right to effective assistance of counsel.

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Continue supporting facts of claim Two: Page -6-  
 A defendant may be requested to testify by narrative summary but "only" if he has admitted guilt to his lawyer...and wish to give testimony contrary to the truth. Here, trial counsel refuse to participate during petitioner's direct testimony telling the courts he had an "ethical obligation". At no time did petitioner admit any guilt to defense trial counsel. Nor did petitioner tell trial counsel that he wished to testify contrary to the truth. In other words, gave perjured testimony. Trial counsel did absolutely nothing to prepare petitioner for direct examination.

Continue claim: Three:

Defense counsel rendered ineffective assistance when he failed to object to hearsay evidence that co-defendant Samantha Smith pled guilty to the crime of accessory after the fact for shooting at Beverly Jones's house. Trial court erred in admitting evidence of a non-testifying co-defendants guilty plea.

Continue supporting facts of claim Three:

Trial counsel failed to object to documents of a co-defendants guilty plea. The documents was never discussed in court but merely moved into evidence at the end of trial. These documents were viewed by the jury as evidence even though the co-defendant invoked her 5th Amendment right. Trial courts allowed in documents of a non-testifying co-defendants plea...

Continue Class Four: Page -6-

Defense counsel rendered ineffective assistance by failing to object to the verdict and sentence for the premeditated aspect of attempted murder on the grounds that the enhancement of premeditation was not pleaded as required. (Please view U.S. constitutional violations on additional page).

Continue Support Facts for Class Four:

Petitioner was convicted and sentenced on the charge of the premeditated aspect of attempted murder without it ever being pleaded. Petitioner never received notice of such charge. Although the requirement of notice and plea of all charges has been long settled, trial counsel failed to object to the verdict and sentence of ~~or did not plead~~ this charge that petitioner never received notice of or did not plead to.

Continue Class Five:

The trial court erred regarding the predicate felonies used for the gang special circumstances and the several gang enhancements. Defense counsel rendered ineffective assistance when he failed to object to nonqualifying crimes being used to prove the street gang special circumstances and the street gang enhancement.

Continue Supporting Facts: of Class Five.

The prosecutor used seven different crimes to prove the gang special circumstances and the several gang enhancements. These were all separate acts. The court failed to sua sponte the jury that it must be unanimous as to which two or more crimes it relied upon. At least 4 of the charges did not qualify as predicate offenses. Trial counsel failed to object to these non-qualifying offenses. Even though he had knowledge that they were committed by several gangs.



~~Attached is summary of Federal writ of H.C.~~

Page 6

Continue ~~Continues~~ See ~~Relates~~... U.S. constitutional violations for each class:

Class one's U.S. constitutional violations:

Violation of U.S. Constitution 5th and 14th Amendments. Also it violates Petitioner's 6th Amendment.

Class two's U.S. constitutional violations:

Violation of U.S. Constitutional 5th, 14th and 6th Amendments.

Class Three's U.S. Constitutional violations:

Violation of U.S. Constitution 6th and 14th Amendment.

Class Four's U.S. constitutional violation:

Violates U.S. Constitution, 6th, 5th and 14th Amendment.

Class Five's U.S. constitutional violations:

It violates U.S. Constitution 5th and 14th Amendments.

Class Six's U.S. Constitutional violation:

5th & 6th Amendment.

Class Seven's U.S. Constitutional violations:

5th Amendment and 6th Amendment.

Attached Document of Federal Court of A.C.

Page #7-

contributions list of supporting cases.

People v. Hill (1988) 17 cal. 4th 800

People v. Hill (1984) 37 cal. 3d 436

People v. Jackson (1986) 177 cal. App. 3d 708

People v. Johnson (1998) 62 cal. App. 4th 608

People v. Koonitz (2002) 27 cal. 4th 1041

People v. Lee (1994) 28 cal. App. 4th 1724

People v. Mellon (1988) 44 cal. 3d 713

People v. Nation (1980) 26 cal. 3d 412

People v. <sup>Page</sup> ~~Nation~~ (1979) 23 cal. 3d 412

People v. Robles (1970) 2 cal. 3d 205

People v. Sanchez (1985) 170 cal. App. 3d 216

People v. Seal (2004) 34 cal. 4th 535

People v. Seagull (1982) 138 cal. App. 3d 34

Apprendi v. New Jersey (2000) 530 U.S. 436

Berger v. United States (1935) 295 U.S. 78

Brewer v. Williams (1977) 430 U.S. 18

Chapman v. California (1967) 386 U.S. 36

Crawford v. Washington (2004) 541 U.S. 36

Eggert v. Superior Court (2004) 120 cal. App. 4th 1306

Forza v. California (1975) 422 U.S. 806, 45 L. Ed. 2d 562

Gideon v. Wainwright (1963) 372 U.S. 335

In re Anthony R. (2001) 87 cal. App. 4th 348

In re Joseph B. (1983) 34 cal. 3d. 952

In re Michael S. (1983) 141 cal. App. 3d 814

In re Washington (1970) 397 U.S. 358

Jackson v. Vazquez (1979) 443 U.S. 307

See < Next Page  
More  
15.



Attached documents of Federal Court of A.C.  
page #7.

continue list of supporting cases...

Johnson v. Zerbst (1938) 304 U.S. 458

Jones v. Smith (9th Cir. 2000) 231 F.3d 1227

Nix vs. Whiteside (1986) 475 U.S. 157, 89 L. Ed 2d 123

Ohio v. Roberts (1980) 448 U.S. 56

People v. Alan (1986) 42 Cal. 3d 1222

People v. Benavides (2005) 35 Cal. 4th 64

People v. Bough (1996) 12 Cal. 4th 652

People v. Carrera (1989) 49 Cal. 3d 291

People v. Cummings (1993) 4 Cal. 4th 1233

People v. Duran (2002) 97 Cal. App. 4th 1448

People v. Espinoza (1992) 3 Cal. 4th 806

People v. Gudson (1993) 19 Cal. App. 4th 1700

People vs. Guzman (1988) 45 Cal. 3d 915

People v. Zumbardo (2004) 124 Cal. App. 4th 228

Stearns v. United States (1960) 361 U.S. 668

United States v. Cronin (1984) 466 U.S. 648

United States v. Sanchez (9th Cir. 1999) 176 F.3d

1214.

Attached Document 10 February 2007 of H.C.  
 Continue page 6- Additional grounds  
 (clauses)  
 clause SIX:

Appellant's improper conviction of criminal threats, penal code 242.2, prejudiced the entire case...

Supporting facts of clause SIX:

Appellant was charged as count V with making criminal threats, penal code 242.2, against his fiancé Lisa Welch and her father Samuel Guy Rhone. Lisa's older cousin was at the Nation's Market parking lot. Rhone overheard someone, who was not visible, say if he did not get his money, he'd "blow away" or "smoke" the Welch family, starting with Lisa and the baby. Tammy Welch told the speaker was Appellant, Lisa's father, Samuel told officer Gonzales that he overheard Appellant threaten Lisa on the telephone. Appellant wanted his money back regarding the car. Other wise, he was going to kill them. The trial court's improperly allowed the Rhone testimony that Lisa said Appellant "had assaulted her in the past, telling the jury he has hit, punched, and kicked her on numerous occasions. These statements were highly prejudicial. The courts improperly allowed these hearsay statements to be heard by the jury regarding the threats.

Clause Seven:

The trial court erred in admitting officer Bertarua's opinion that Carlette was a "witness" and that Carlette was "in the Area when the shooting occurred".

Supporting facts for clause Seven:

In Carlette's typed statement to officer Bertarua, the jury was allowed to hear, over defense objection, Bertarua's ~~pre~~-preamble. (Please view U.S. constitution - constitution violation on additional page for count 6 and 7.

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, Joseph Horne V-84328, declare:

I am over 18 years of age and a party to this action. I am a resident of Pelican  
Bay State Prison,  
in the county of Del Norte

State of California. My prison address is: P.O. Box - 7500  
Crescent City CA 95532

On November 12<sup>th</sup> 2007,  
(DATE)

I served the attached: Petition For A writ of Habeas  
corpus. (Federal)  
(DESCRIBE DOCUMENT)

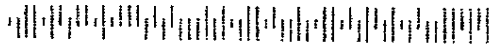
on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope,  
with postage thereon fully paid, in the United States Mail in a deposit box so provided at the  
above-named correctional institution in which I am presently confined. The envelope was  
addressed as follows:

Office of Attorney General  
State of California  
455 Golden Gate Avenue Suite 11000  
San Francisco, CA 94102-3664

I declare under penalty of perjury under the laws of the United States of America that the  
forgoing is true and correct.

Executed on 11/12/2007  
(DATE)

[Signature]  
(DECLARANT'S SIGNATURE)



NAME: Joseph Horne

CDC NO: V-84328 HOUSING: A1-120

PELICAN BAY STATE PRISON  
P.O. BOX 7500  
CRESCENT CITY, CA 95532

RECEIVED

NOV 15 2007

Judge  
To: Off.  
~~Dist.~~  
Dist.  
1301  
Oak

**LEGAL MAIL**